

## **BOULDER CITY COUNCIL PROCEEDINGS**

**Tuesday, August 17, 2010**

1. **CALL TO ORDER AND ROLL CALL**

Mayor Osborne called the regular August 17, 2010 Council meeting to order at 6:04 p.m. in the Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Gray, and Morzel.

Council Member Karakehian was absent.

A. **NCAR/UCAR 50<sup>th</sup> Anniversary Recognition.**

Mayor Osborne read a declaration honoring NCAR/UCAR for its 50<sup>th</sup> Anniversary and presented a Haertling plaque to the recipients. Attendees included Rick Anthes, President of UCAR; Roger Wakimoto, Director of NCAR; Jack Fellows, Vice President of UCAR; and Cindy Schmidt, Director of Development and Governmental Affairs.

B. **Buy Into Boulder Declaration.**

Mayor Osborne read a declaration encouraging residents to shop in Boulder via the “Buy Into Boulder” initiative sponsored by the Chamber of Commerce and other local partners. The goal of the initiative was to promote Boulder businesses and educate the public of the importance of investing in its community.

Mayor Osborne announced that the deadline was September 7 for applicants for the Beverages Licensing Authority and Water Resources Advisory Boards.

2. **PUBLIC PARTICIPATION and COUNCIL/STAFF RESPONSE** – 6:15p.m.

1. Don Mock congratulated NCAR/UCAR on its anniversary. As President of the PLAY Boulder Foundation (Parks and Leisure for Adults and Youth), he explained the name change (the Foundation was formerly the Boulder Parks and Recreation Foundation). He announced the ‘Boulder Nites Classic’ event on Saturday, August 28 at 7:30 p.m. to help fund the City’s EXPAND program.  
[www.bouldernitesclassic.com](http://www.bouldernitesclassic.com)
2. Sam Alschuler, an Orchard Grove resident, thanked the council for supporting the energy occupation ballot measure.
3. Steve Pomerance spoke to the City’s CPCN testimony for the Smart Grid City project and indicated the City should immediately pull its testimony and not settle. The City is foreclosing its residents’ options.
4. Rob Smoke spoke to the council compensation increase in the term of health benefits commenting that the public had already denied a compensation increase twice. He felt the move was unethical and wrong and there were more significant problems such as homelessness to focus city resources.
5. Elizabeth Allen concurred with Steve Pomerance’s comments. She also agreed with Mr. Smoke’s comments about council benefits and noted the timing was bad for the request.

City Manager's Response:

City Manager Brautigam responded to Mr. Pomerance's comments that staff's testimony on the CPCN had been corrected and no dollar amount had been supported. She wanted it very clear that the testimony was withdrawn and the official testimony had no dollar amount in it.

City Attorney Response:

None.

City Council Response:

Council Member Cowles asked whether council had been sent the testimony of the City and the correct testimony. This was confirmed.

Deputy Mayor Wilson referenced the Council Goals under the Climate Action Plan related to maximizing utilization of Xcel/SmartGrid.

Mayor Osborne spoke to the council compensation item and noted there would be a second reading on the issue. The intent was to allow Council Members to buy into the City's health care plan.

3. **CONSENT AGENDA: - 6:38 p.m.**

- A. **CONSIDERATION OF A MOTION TO ACCEPT THE JULY 20, 2010 CITY COUNCIL MEETING MINUTES.**
- B. **CONSIDERATION OF A MOTION TO ACCEPT THE JULY 13, 2010 STUDY SESSION SUMMARY ON CROSSWALK SAFETY.**
- C. **CONSIDERATION OF A MOTION TO APPROVE AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF BOULDER AND THE BOULDER COUNTY CLERK AND RECORDER FOR THE CONDUCT AND ADMINISTRATION OF THE NOVEMBER 2, 2010 SPECIAL COORDINATED MUNICIPAL ELECTION.**
- D. **CONSIDERATION OF A RESOLUTION CONCERNING THE PROPOSED CITY OF BOULDER (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND ITS WASTEWATER UTILITY ENTERPRISE) WATER AND SEWER REVENUE BONDS, SERIES 2010, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$10,500,000, AUTHORIZING THE OFFICIAL NOTICE OF BOND SALE WITH RESPECT TO SAID SERIES 2010 BONDS; PRESCRIBING CERTAIN DETAILS CONCERNING SAID PROPOSED SALE AND SAID SERIES 2010 BONDS; APPROVING THE FORM OF A PRELIMINARY OFFICIAL STATEMENT; AND PROVIDING THE EFFECTIVE DATE OF THIS RESOLUTION.**
- E. **CONSIDERATION OF A MOTION TO APPROVE THE ONE-TIME TRANSFER OF \$30,000 OF THE AVAILABLE \$72,065.87 ASSET FORFEITURE FUNDS TO THE BOULDER COUNTY DRUG TASK FORCE (BCDTF) OPERATING ACCOUNT.**

- F. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE 7751 SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER, COLORADO, AT THE SPECIAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2010, THE ISSUE OF WHETHER THE CITY OF BOULDER TAXES SHOULD BE INCREASED BY UP TO \$4.1 MILLION (IN THE FIRST FULL FISCAL YEAR) ANNUALLY AND BY SUCH AMOUNTS AS MAY BE COLLECTED ANNUALLY THEREAFTER BY THE IMPOSITION OF A UTILITY OCCUPATION TAX ON PUBLIC UTILITY COMPANIES THAT DELIVER ENERGY TO CUSTOMERS IN THE FORM OF ELECTRICITY AND GAS BEGINNING JANUARY 1, 2011 AND EXPIRING ON DECEMBER 31, 2015; AND SETTING FORTH RELATED DETAILS.**
- G. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE TO AMENDING SECTION 5-7-4, "ALCOHOL OFFENSES: POSSESSION AND SALE BY MINORS UNLAWFUL," B.R.C. 1981, TO MORE CLOSELY MIRROR THE STATE STATUTE DEFINING THIS VIOLATION.**
- H. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AMENDING TITLE 2, GOVERNMENT ORGANIZATION, CHAPTER 1, CITY COUNCIL, B.R.C. 1981, TO ADD A NEW SECTION ON COUNCIL MEMBER BENEFITS.**

Regarding item 3H, Council Member Ageton requested the report be attached which was produced by the Council Retreat Committee that was appointed to study the council compensation/benefits issue.

Regarding item 3H, Council Member Becker asked that the second reading memo further address why, if council members were considered part time, they did not already have access to health insurance.

Council Member Gray commented that as the City moved toward a more paperless environment, she would like to see laptops etc...addressed in the memo related to council, and board and commission benefits.

Council Member Morzel moved, seconded by Wilson to approve Consent items 3A through 3H with a change in language on item 3C. The motion carried unanimously, 8:0; Karakehian absent. 6:42 p.m.

4. **CALL- UP CHECK IN:**

No interest was expressed.

## ORDER OF BUSINESS

### 5. PUBLIC HEARINGS: - 6:43 p.m.

ITEMS 5A AND 5B WILL BE HELD UNDER ONE PUBLIC HEARING.

#### A. CONSIDERATION OF THE FOLLOWING ITEMS RELATED TO THE GAPTER ROAD NEIGHBORHOOD AND BURKE II OPEN SPACE AND MOUNTAIN PARKS PROPERTY ANNEXATIONS:

1. APPROVAL OF A CHANGE TO THE BOULDER VALLEY COMPREHENSIVE PLAN PLANNING AREA DESIGNATION OF THE GAPTER ROAD NEIGHBORHOOD FROM AREA IIB TO IIA.
2. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCES NO. 7740, NO. 7741 AND NO. 7742 PERTAINING TO THE ANNEXATION OF 30 PROPERTIES TOTALING 30.5 ACRES WITHIN THE GAPTER ROAD NEIGHBORHOOD LOCATED AT 993 GAPTER ROAD., 980 GAPTER RD., 961 GAPTER RD., 954 GAPTER RD., 932 GAPTER RD., 931 GAPTER RD., 898 GAPTER RD., 897 GAPTER RD., 881 GAPTER RD., 880 GAPTER RD., 859 GAPTER RD., 858 GAPTER RD., 841 GAPTER RD., 819 GAPTER RD., 814 GAPTER RD., 797 GAPTER RD., 792 GAPTER RD., 777 GAPTER RD., 772 GAPTER RD., 751 GAPTER RD., 724 GAPTER RD., 723 GAPTER RD., 1225 GAPTER RD., 1156 GAPTER RD., 1112 GAPTER RD., 1084 GAPTER RD., 1064 GAPTER RD., 1051 GAPTER RD., 1040 GAPTER RD., 1010 GAPTER RD. WITH AN INITIAL ZONING DESIGNATION OF RURAL RESIDENTIAL – 2 (RR-2) AND AMENDING THE ADOPTED STREAM, WETLAND, AND WATER BODY REGULATORY MAPS.
3. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7739 PERTAINING TO THE ANNEXATION OF THE BURKE II, OPEN SPACE AND MOUNTAIN PARKS DEPARTMENT PROPERTY LOCATED AT 0 BASELINE ROAD BETWEEN 55<sup>TH</sup> STREET AND CHERRYVALE ROAD WITH AN INITIAL ZONING DESIGNATION OF PUBLIC (P) AND AMENDING THE ADOPTED STREAM, WETLAND, AND WATER BODY REGULATORY MAPS.
4. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7743 PERTAINING TO THE APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF BOULDER AND THE COUNTY OF BOULDER REGARDING THE LOAN OF PUBLIC FUNDS FOR THE CONSTRUCTION OF NECESSARY WATER AND WASTEWATER UTILITIES IN GAPTER AND MCSORLEY ROADS.
5. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7744 AMENDING SECTION 6-1-16, “DOGS RUNNING AT LARGE PROHIBITED,” B.R.C. 1981 TO ADD A PORTION OF THE BURKE II PROPERTY TO THOSE AREAS IN WHICH VOICE AND SIGHT CONTROL OF DOGS IS PERMITTED AND SETTING FORTH RELATED DETAILS./

Susan Richstone provided a brief introduction to the item. Bev Johnson then provided an overview of: 1) the Boulder Valley Comprehensive Plan land use map change, 2) the annexation package and the costs to residents and the city, and 3) the stream, wetland and water body map changes.

Council Member Morzel clarified the need to annex the Burke II property to maintain contiguity. She asked whether other properties in Area IIB (Old Tale and Cherryvale) would eventually be annexed. She also asked what it meant to abandon a septic system.

Joe Malinowski with Boulder County Public Health commented this meant pumping the tank and filling it with dirt so it was no longer a threat to public health.

Council Member Appelbaum clarified that Boulder County would potentially up-front the costs for up to six properties. Michelle Krezek from the Boulder County Commissioners office noted the Commissioners have committed to up-front up to \$210,000 into the project based on the original estimates. They were waiting until they knew what the exact numbers would be. They have already paid some pre-construction costs to the city. Council Member Appelbaum referenced page 53 on the Intergovernmental Agreement and noted that the numbers weren't adding up. He raised additional concern about the parking and street conditions discussed on page 16 of the memo. He felt the issue should be resolved prior to annexation. He mentioned that residents should be notified that the City would not do snow removal as the County currently does.

Council Member Becker asked why the City couldn't provide services without annexation. Susan Richstone responded that Boulder is a full service city and doesn't generally sell individual services. There are clear policies in the Comprehensive Plan that address the circumstances under which annexation is required. Council Member Becker asked for clarification regarding the 60 foot easement to either side of the centerline of the creek. Bob Harberg responded that this was the minimum necessary to access and maintain the existing flood conveyance zone.

Deputy Mayor Wilson asked about the cost of a new septic system that would work in the area, if it was legal. Jim Malinowski indicated it was site specific. It could fall within the low \$40,000's up to the mid \$50,000's. He commented on the bids for utility work noting the old preliminary estimate was \$1.2 million and the current bid amount was \$850,000; This bid was a reflection of the slow down in the construction industry.

Council Member Ageton referenced page 15 and asked what the minimum threshold was? She asked, outside of annexation, how was an easement acquired; was there eminent domain or authority to extract or negotiate with the owner to purchase the easement. Staff responded that it would be acquired later on a project-specific basis.

Council Member Gray clarified regarding the 60 foot easement that the property owners would not get a stormwater and flood management PIF credit.

The public hearing was opened: - 7:46 p.m.



1. Steve Boselli appreciated Council and staff's time over the last six years on this project. He commented that he was willing to foot the \$50,000 fee to keep the neighborhood moving along this track. He spoke to there being no explanation regarding the PIF fees and asked Council to hold staff to its original agreement to waive the PIF fees.
2. Gifford Miller pooling time with Midra Miller and Charles Teschner commented that he was a teacher in a one income family nearing retirement. He felt he had to pay \$50,000 for the right to stay in his house. He felt this was a forced annexation. He asked council to waive the stormwater and flood PIFs and to set the city financing interest rate at the federal funds rate plus 1.5%. The terms were altered without notification to neighbors.
3. Linda Ellis spoke to her inability to obtain financing and has opted for Option C – which also meant the buyer for her home must front those costs which is a bad situation. She supported previous speakers' comments to waive the stormwater PIF fees.
4. Michelle Sanders commented that neighbors were really ready to get on with their lives. She agreed with the previous speakers regarding the PIFs and interest rates. She commented that the water that pooled in her yard from the rain storm the other day was gone in a matter of minutes. The stormwater PIFs aren't necessary for their area. She provided a handout of traffic solutions under consideration by the County that she would like to see implemented.
5. Pat Downey, not a resident of Gapter, spoke against the annexation. He was opposed to allowing additional growth in Boulder and he didn't feel the annexation would be contiguous to the city. A drought year would further tax Boulder's water supply.
6. Michael McMenamy spoke to the hardships this was creating for neighbors.
7. Tom Burke urged council to make special negotiations for this unique case and waive the stormwater PIF.

There being no further speakers, the public hearing was closed at 8:10 p.m.

Council Member Becker moved, seconded by Wilson to approve the motions as presented in items 5A, page 7 and 5B, page 1 with Ordinance No. 7743 amended in Option C, removing the 10-year period for paying interest. Motion made at 8:41 pm

Council Member Cowles offered a friendly amendment adding the findings on the blue sheet handout. The friendly amendment was accepted.

Council Member Becker withdrew her amendment removing the 10 year period for paying interest.

Council Member Morzel requested a study session on areas IIA and IIB with the County regarding future annexations.

The public hearing was reopened: - 9:12pm

1. Marta Lindrose noted the easement would do nothing for flood control purposes. Maybe 4 other properties would participate if there was no easement.

2. Gifford Miller clarified that when the revised annexation agreement was presented in July 2009 the stormwater PIF changes were not announced or explained. It weakened the faith in negotiations with the city and was disingenuous. This was consistently offered for 5 years.
3. Michelle Sanders commented that the open space to the south was used for irrigation and hay. The cows aren't accountable for the wastewater they're creating on South Boulder Creek. There was no hard evidence that neighbors have stormwater issues. The road maintenance payments to the County are not contributing to new road construction costs.

The public hearing was closed at 9:17 p.m.

Vote was taken on the main motion. The motion carried 6:2, Morzel and Appelbaum opposed; Karakehian absent. The following was passed:

- 1) Approve the change to the Boulder Valley Comprehensive Plan Planning Area designation of the Gapter Road Neighborhood from Area IIB to IIA.
- 2) Adopt Ordinances No. 7740, No. 7741 and No. 7742 pertaining to the annexation of 30 properties totaling 30.5 acres within the Gapter Road Neighborhood located at 993 Gapter Road., 980 Gapter Rd., 961 Gapter Rd., 954 Gapter Rd., 932 Gapter Rd., 931 Gapter Rd., 898 Gapter Rd., 897 Gapter Rd., 881 Gapter Rd., 880 Gapter Rd., 859 Gapter Rd., 858 Gapter Rd., 841 Gapter Rd., 819 Gapter Rd., 814 Gapter Rd., 797 Gapter Rd., 792 Gapter Rd., 777 Gapter Rd., 772 Gapter Rd., 751 Gapter Rd., 724 Gapter Rd., 723 Gapter Rd., 1225 Gapter Rd., 1156 Gapter Rd., 1112 Gapter Rd., 1084 Gapter Rd., 1064 Gapter Rd., 1051 Gapter Rd., 1040 Gapter Rd., 1010 Gapter Rd. with an initial zoning designation of Rural Residential – 2 (RR-2) and amending the adopted Stream, Wetland, and Water Body Regulatory Maps.
- 3) Adopt Ordinance No. 7739 pertaining to the annexation of the Burke II, Open Space and Mountain Parks Department property located at 0 Baseline Road between 55<sup>th</sup> Street and Cherryvale Road with an initial zoning designation of Public (P) and amending the adopted Stream, Wetland, and Water Body Regulatory Maps.
- 4) Adopt Ordinance No. 7743 pertaining to the approval of an intergovernmental agreement between the City of Boulder and the County of Boulder regarding the loan of public funds for the construction of necessary water and wastewater utilities in Gapter and McSorley roads.
- 5) Adopt Ordinance No. 7744 amending Section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981 to add a portion of the Burke II property to those areas in which voice and sight control of dogs is permitted and setting forth related details.

And approving Ordinance Nos. 7739, 7740, 7741, and 7742 by Emergency per the following findings outlined in the blue handout provided at the meeting:

Section 6. Council finds that an emergency exists due to the need to obtain contiguity to the Gapter I, II, and III annexations proposed by Ordinance Nos. 7740, 7741, and 7742. This ordinance is necessary for the preservation of the public peace, safety, and property. The council declares this to be an emergency measure and it shall be effective immediately upon its final passage; and

Section 7. Council finds that an emergency exists due to the need of property owners annexing into the city to connect to city water and wastewater services and to avoid potential public health hazards associated with existing wells and septic systems. Further, the city has received time sensitive bids upon which it would like to act, and desires to commence and complete construction as soon as practical. This ordinance is necessary for the preservation of the public peace, safety, and property. The council declares this to be an emergency measure and it shall be effective immediately upon its final passage.

**B. DIRECTION ON THE POTENTIAL CHANGES TO THE RH-2 ZONE DISTRICT, INCLUDING:**

**1. PARKING REQUIREMENTS AND DENSITY AND FLOOR AREA CALCULATIONS. – 9:25 P.M.**

David Driskell provided the introduction to the item. Jessica Vaughn provided an overview of the RH-2 Zone parking requirements and density and floor area calculations.

Council Member Appelbaum spoke to parking requirements asking about detached dwelling units being limited to 1 parking space. He also asked, concerning phasing, what might be allowed in RH-2 that would be seen as inappropriate in RMX-1.

Council Member Gray raised concern about uses when there are 1+ cars, such as the problem with Spruce and Pine, it was hard to clump them all together. She referenced page 31 noting two areas on University Hill where the bars and other uses don't fit. She felt a need for a different zone or a change to RH-2. She thought it needed more work.

Deputy Mayor Wilson generally supported the changes but echoed Council Member Gray's comments about uses.

Council Member Becker commented that she would like to see the letter from Naropa University regarding RMX-1 changes addressed.

Council Member Morzel would like to see issues addressed related to RH-2 for lower densities.

Council Member Appelbaum commented that he had concern with the maximum FAR requirement. He noted it would depend on what happened with Goss Grove. Perhaps it could be addressed under the use review. He thought this was on the right track but asked, "what is the goal?"

Council Member Gray suggested incentivizing and prioritizing changes to come back in 2011.



Council Member Ageton moved, seconded by Morzel to direct staff to prepare code changes for the RH-2 district to:

- Amend the parking requirements to a per bedroom basis;
- Eliminate the maximum floor area requirement (800 square feet) for single family dwellings;
- Increase the by-right density to 14 dwelling units per acre; and
- Implement Phase Option 2.

The motion carried 7:1; Cowles opposed, Karakehian absent.

6. **MATTERS FROM THE CITY MANAGER:** - 10:31 p.m.

A. **CLEAN ENERGY STUDY UPDATE.**

City Manager Jane Brautigam introduced the item. David Driskell and Jonathan Koehn provided the presentation on the item. Mr. Koehn noted that issues with the Xcel Franchise and House Bill 1365, which was a clean air/cleans jobs act will impact the future of a clean energy strategy. Mr. Koehn noted the importance of incorporating the public and other regional partners in the scoping process. A study session is schedule on November 30 to present the scoping process and an aggressive timeline for the clean energy study. The Climate Action Plan tax sunsets in April of 2013 so staff would like to have an energy strategy completed by the end of 2012.

Council Member Becker asked how the timeline would change if the replacement tax did not pass. Staff indicated more work would need to be done to determine that answer. She commented that ultimately she wants an answer to what leads to an overall increase in Boulder and Colorado's energy production. She was interested in what type of things would impact the local economy positively.

David Driskell invited Council Members to provide specific thoughts/feedback on Hotline for staff to review prior to the study session.

Deputy Mayor Wilson asked for a soft copy of the handout Mr. Driskell provided.

Council Member Cowles mentioned the Eco Northwest report from Oregon and noted the importance of not getting too wrapped up in an economic analysis.

Council Member Appelbaum spoke to Municipalization asking how far the analysis should go and how much information would be enough for Council and the public to make an informed decision.

Council Member Gray was interested in having Xcel participate in the process and learning more about its future strategy for renewables. She suggested future decisions about Boulder hydro be considered in this context.

Council Member Morzel would like additional consideration about sources of methane for energy production.

Mayor Osborne suggested everyone take time to read the handout more thoroughly and provide questions and feedback to staff. She requested frequent updates at Council meetings.

Deputy Mayor Wilson was concerned about how Boulder gets real versus virtual renewables; how do we get more distributive generation; how do we get financed etc....

Council Member Ageton expressed the importance of keeping the options open and not narrowing the options too soon. CU students should also be included in the stakeholder groups.

7. **MATTERS FROM THE CITY ATTORNEY:**

None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. **POTENTIAL CALL-UPS:**

1. **VACATION OF A TWO SQUARE FOOT PORTION OF A SIX FOOT UTILITY AND GAS EASEMENT AT 4105 RIVERSIDE DRIVE. INFORMATION PACKET DATE: AUGUST 10, 2010. LAST OPPORTUNITY FOR CALL-UP IS AUGUST 17, 2010. STAFF LEVEL APPROVAL.**

No action was taken on the item.


9. **PUBLIC COMMENT ON MATTERS:** None

10. **FINAL DECISIONS ON MATTERS:** None


11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 10:53 P.M.

APPROVED BY:

  
Susan Osborne,  
Mayor

ATTEST:

  
Alisa D. Lewis,  
City Clerk